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ANTI-CHINESE LEGISLATION IN BRITISH AMERICA.

The anti-Chinese legislation of Canada* is very much like that of Australasia. The Chinese Immigration Act, 1885,¹ puts a tax of \$50 on Chinese entering Canada, by vessel or otherwise,² and restricts the number of Chinese a vessel can bring to one for every fifty tons,³ with penalties on the Chinaman, the master, and the owner† for breaches of its various provisions,⁴ similar to those imposed by the Australasian statutes, including forfeiture of the vessel, if the master lands or permits to land any Chinese before the duty is paid, or wilfully makes any false statement respecting the number of persons on board his vessel.⁵ The exemptions from the operation of the act differ somewhat from the usual ones in Australasia.‡ There is no exemption of British subjects, there is an exemption of the suite and the servants of diplomats,⁶ a fee of one dollar is charged for temporary exemption certificates, and such certificates may be obtained by "every Chinese person,"⁷ instead of being obtainable only by *bona fide* residents of the colony at the passing of the act or at the date of its going into

*This paper completes the survey of anti-Chinese legislation in the British colonies begun in the last number of this *Journal*. The references made are, as before, to the Parliamentary blue-book of July, 1888, entitled *Correspondence relating to Chinese Immigration, . . . with a Return of Acts*.

† But no penalty on the charterer, as in the Australasian statutes.

‡ The usual exemptions are British subjects, consuls and diplomats, crews, and Chinese with temporary exemption tickets. Queensland, Canada, and British Columbia, however, do not exempt British subjects; Queensland and South Australia and British Columbia do not exempt consuls and diplomats, and Victoria (p. 74, § 6) and New Zealand (p. 54, § 7) exempt them only from having to pay the entrance-fee, and not from the other provisions of their respective acts; Queensland exempts crews only from the entrance-fee (p. 81, § 11), Canada only by implication (the act applying only to persons "*entering* Canada," p. 60, §§ 1 and 4), and British Columbia only to the number of 20 (p. 67, § 5; p. 71, § 5). In Victoria, as I have said, there is no temporary exemption. The reports of the new statutes for the Northern Territory and of New South Wales do not give the exemption clauses (p. 4, No. 5, and p. 45, Nos. 80 and 81). There are no exemptions from the Chinese "Tax" and "Regulation" Acts of British Columbia.

1 p. 60.

2 p. 60, § 4.

3 p. 60, § 5.

4 p. 60, § 5; p. 61, § 7; p. 62, §§ 16-19.

5 p. 61, § 7.

6 p. 60, § 4.

7 p. 61, § 14.

operation, as in Australia¹ and in British Columbia.² There is an exemption, also, of "tourists, merchants, men of science, and students," bringing certain documentary evidence of their identity, occupation, and object, "merchant" not to include "any huckster, pedler, or person engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation."³ The amendment of June 23, 1887, exempts the wife of any person who is not of Chinese origin.* Section 13 of the principal act (of July, 1885) contains the seemingly needless enactment that "the entrance-fee . . . shall not apply to any Chinese person residing or being within Canada at the time of the coming into force of this act," and that such Chinese person may get a certificate of residence for fifty cents.† Section 2 of the amendment⁴ makes provision for allowing Chinese to pass through Canada without paying the entrance fee. No Chinese are allowed to land "until the quarantine officer has granted a bill of health, and has certified . . . that no leprosy or infectious or contagious disease exists among them," and "no permit to land shall be granted to . . . any Chinese woman who is known to be a prostitute."⁵

Perhaps the most important difference between the Canadian and Australasian anti-Chinese laws is that in Canada the controller must "keep a register of all persons to whom certificates of entry have been granted,⁶ whether they come by sea or land."⁷ Section 17 of the act of July, 1885, provides for the suppression of "any sort of court or tribunal composed of Chinese persons for the hearing and determination of any offence committed by a Chinese person," but it is

*p. 63, § 1. This is the only instance, in the existing anti-Chinese legislation in all these colonies, of a special exemption of women, except in Tasmania, where the act applies only to males (p. 82, § 1), and in Victoria, where it applies to "any male adult native of China, or its dependencies, or of any islands in the Chinese seas not born of British parents [*sic*], or *any person* born of Chinese parents." (The *Italics* are mine.) The exemption or non-exemption of women from legislation against Chinese immigration is of little practical importance.

†p. 61. Cf. similar provision in New Zealand in 1881 (p. 87, § 13). Perhaps this is meant, like § 7 of the British Columbia act of 1885 (p. 71), to exempt Chinese who were residents, but temporarily absent, at the time of the passing of the act.

¹p. 77, § 12; p. 79, § 9; p. 81, § 10; p. 83, § 10; p. 85, § 10; p. 87, § 14.

²p. 67, § 6; p. 71, § 6.

³p. 60, § 4.

⁴p. 63.

⁵p. 61, § 9.

⁶p. 61, § 11.

⁷p. 61, § 12.

not to be construed as preventing Chinese from submitting disputes to arbitration.¹ There is provision, apparently, for the summary trial of some of the suits and prosecutions arising under this act, but not of all.* There is no provision for magistrates deciding "on their own view and judgment" whether a person is a Chinese. Beyond the points I have mentioned, Canadian anti-Chinese legislation differs in no important respect from that of Australasia.

With British Columbia, the case is quite different. The legislation of that province deals with the problem, so far as it is simply a question of Chinese immigration, by forbidding such immigration. "An Act to prevent the Immigration of Chinese,"² February 18, 1884, enacts that, "whereas it is expedient to prevent the immigration of Chinese into British Columbia,"² "it shall be unlawful for any Chinese to come into the province,"³ and lays penalties upon any Chinese who hereafter shall come in³ and upon "any person who shall bring or assist in bringing into British Columbia any Chinese or who shall assist in any way any Chinese in coming into British Columbia,"† the penalties to be enforced by rapid and summary procedure,⁴ the justice deciding, "upon his own view and judgment," whether any person charged or brought before him is a Chinese or not.⁵ The act does not apply to "any Chinese actually employed as seaman, cook, steward, or waiter upon any vessel, wherein the number of Chinese so employed shall not exceed twenty."⁶ Temporary exemption certificates are granted to Chinese who were *bona fide* residents of the province at the time of the passing of the act, and who shall have their photographs taken at their own

* p. 62, § 22. All suits and all prosecutions for offences that are not made misdemeanors "shall be tried before one or more justices of the peace, or before the recorder, police magistrate, or stipendiary magistrate having jurisdiction."

† p. 66, § 3. The penalty upon the Chinese is only \$50, the amount of the usual entrance-fee; but the penalty on any one assisting him is sufficient to prevent anybody from paying his entrance-fee for him and from transporting him. He would have to walk from the United States or Canada, and would have to pay his entrance-fine some time, even if he has served his six months' imprisonment at hard labor for not doing so at first. (p. 66, § 2.)

¹ p. 62.

² p. 66.

³ p. 66, § 2.

⁴ p. 66, §§ 2-4.

⁵ p. 67, § 7.

⁶ p. 67, § 5.

expense, a copy to be kept and marked with the number of the certificate.¹

The act of March 9, 1885, contains no allusion to the above act, although they are almost precisely alike. The only differences are that the act of 1885 adds those Chinese who had been previously to its passage *bona fide* residents of the province to the number who can obtain temporary exemption certificates,² makes provision for the return to the province, "free from the provisions of" the act, of any Chinese who had resided there within a year before the passing of the act, but who, at the time of its passing, were temporarily absent, and for the issue of a certificate to that effect to every such Chinese,³ but also enacts that "it shall be lawful to impose a fee of \$5 for every certificate to be granted under the provisions of this act."⁴

The Chinese already in British Columbia are dealt with by an act of Feb. 18, 1884, which prevents them from acquiring crown lands (and from being granted authority by "a commissioner, as defined by the 'Land Act, 1884,' or any other person, to . . . record or divert any water from the natural channel of any stream, lake, or river" in the province),⁵ and by the "Chinese Tax Act, 1878," and the "Chinese Regulation Act, 1884," which "tax" and "regulate" them as follows:—

The "Chinese Tax Act," after stating in the preamble that the Chinese "evade" certain taxes "by reason of the provisions of the acts [imposing them] not being applicable for the collection of taxes from Chinese,"⁶ provides that those acts "shall not apply to Chinese, but, in lieu thereof, the following provisions shall be substituted: . . . every Chinese person over twelve years of age shall take out a license every three months, for which he shall pay the sum of ten dollars in advance,"⁷ the collector being paid by a percentage on what he collects,⁸ and having power to levy the amount of the license with costs, by distress not only of the goods of the Chinese person who has no license, but also "of any goods and chattels in his possession, . . . or of any goods and chattels found on the premises, the property of or in the possession of any other

¹ p. 67, § 6.² p. 71, § 6.³ p. 71, § 7.⁴ p. 71, § 8.⁵ p. 66, No. 4.⁶ p. 63.⁷ p. 63, § 2.⁸ p. 64, § 3.

occupant of the premises." If a Chinese has not a license lawfully issued to him, he *and his employer* are *both* liable to severe penalties;² and he is also liable, under penalty for failure, refusal, or neglect,³ to work out the amount of the license fee on the public roads, at the rate of fifty cents a day, *minus* the cost of food, five per cent. for the wages of an overseer, and five per cent. for the wear and tear of tools,⁴ the day's work being ten hours.⁵ A Chinese must show his license on passing through certain toll-gates.⁶ Every employer of Chinese must, under penalty,⁷ furnish to the collector, when requested, a truthful list of all the Chinamen employed by him, directly or indirectly,⁸ and must keep in his possession the license of each Chinaman in his employ, and show it to the collector when required to do so.⁹ "Any information for any infraction of . . . this act may be heard and determined . . . in a summary manner."¹⁰ In any prosecution for its infraction, the averment in the information that the Chinese had not at the time of the alleged infraction a license, lawfully issued to him, throws upon him the burden of proving that he had.¹¹ The same burden rests upon the person whose goods are distrained for being in the possession of or on the premises occupied by a Chinaman without a license, if the license is not produced.¹²

The "Chinese Regulation Act, 1884," begins by stating, among other things, that the Chinese "evade the payment of taxes justly due to the government, are governed by pestilential habits, are useless in instances of emergency, habitually desecrate graveyards by the removal of bodies therefrom, . . . and . . . are inclined to habits subversive of the comfort and well-being of the community." * It imposes an annual fee of \$10 on every Chinese above the age of fourteen.¹³ Its other provisions are similar to those of the "Chinese Tax Act," except the following: A Chinaman must show the license required by the new act at *every* toll-gate in British Colum-

* p. 67. Cf. letter of Lew Ta Jên to the Earl of Rosebery (p. 56, Appendix I.), characterizing this preamble.

¹ p. 64, § 7. ² p. 64, § 8. ³ p. 65, § 14. ⁴ p. 64, § 12. ⁵ p. 65, § 13. ⁶ p. 65, § 16.
⁷ p. 64, § 6. ⁸ p. 64, § 5. ⁹ p. 64, § 11. ¹⁰ p. 64, § 10. ¹¹ p. 64, § 9. ¹² p. 64, § 7.

¹³ p. 67, § 3.

bia.¹ A "free miner's certificate" costs a Chinaman \$15 instead of \$5,² which is the charge for all other foreigners;* and, if he engages in mining in contravention of the provision requiring him to have such certificate, he and his employer are each liable to a penalty not exceeding \$30.³ Dead bodies of Chinese are not to be exhumed without permission.⁴ The use of opium is prohibited, except for medical purposes.⁵ Rooms must not be let or occupied unless containing 384 cubic feet of space for each person occupying them, and having each a window which opens at least two square feet.⁶ In any proceedings under the act, the burden of proving that he is exempt from the operation of any of its provisions is on the defendant.[†] Pecuniary penalties may be recovered in a summary way.⁷ Convictions shall not be quashed for want of form,⁸ so long as the same is according to the true meaning of the act;⁹ and the tribunal having cognizance of any matter under the provisions of the act may decide, upon its own view and judgment, whether any person is a Chinese, and whether any person who is a Chinese is of the age of fourteen.

A Chinese convicted of an offence under the act cannot appeal without giving notice in writing of his intention of doing so, furnishing security in the sum of \$100, conditioned to abide by the decision, and depositing a sum sufficient in the opinion of the convicting magistrate to pay "the costs and expenses of a jury" to try the appeal.¹⁰

It appears from the letter of Lew Ta Jên to the Earl of Rosebery, which I have cited, that this "Chinese Regulation Act" has been held by the Supreme Court of British Columbia, in the case of *Bull v. Wing Chong*,[‡] to be *ultra vires* the Legislative Assembly of that province.

JOSEPH LEE.

* The above-cited letter of Lew Ta Jên.

† p. 70, § 28. Another new provision is that of Section 16, which reads, "Subsection (4) of the Schedule A to the 'Licenses Ordinance, 1867,' is hereby amended by adding thereto the following words: 'But no license shall be issued to any Chinese.'"

‡ p. 56, Appendix I. This decision was in August, 1885. See *British Columbia Law Reports*, vol. ii., part 2, p. 150.

1 p. 68, § 12.

2 p. 68, § 14.

3 p. 68, § 15.

4 p. 69, § 17.

5 p. 69, § 18.

6 p. 69, § 23.

7 p. 69, § 19.

8 p. 69, § 20.

9 p. 70, No. 7.

10 p. 69, § 20.